

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

ROBERT N. COGAR,

Petitioner,

v.

Civil Action No. 3:05CV119  
(STAMP)

MICHAEL ASTRUE,  
Commissioner of Social Security

Defendant.

**MEMORANDUM OPINION AND ORDER**  
**AFFIRMING AND ADOPTING REPORT AND**  
**RECOMMENDATION OF MAGISTRATE JUDGE**

I. Procedural History

Pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d) ("EAJA"), the plaintiff, Robert N. Cogar, filed a motion for an award of attorney's fees in the amount of \$2,719.89 to be paid directly to the plaintiff's attorney, Brock M. Malcolm. Because the fee amount exceeds the hourly rate set by the EAJA, the plaintiff, who argued for a higher hourly rate based upon the increased cost of living since the implementation and amendment of the EAJA, filed documentation of the consumer price index for the year during which the attorney performed his work, and a calculation of the time the attorney devoted to the plaintiff's case. The defendant filed a response stating that it did not object to the plaintiff's motion and that it would pay the sum sought by the plaintiff upon entry of an appropriate court order.

This matter was referred to United States Magistrate Judge James E. Seibert for submission of proposed findings of fact and recommendation for disposition pursuant to 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B). On August 15, 2007, Magistrate Judge Seibert entered a report and recommendation recommending that the plaintiff's motion for an award of attorney's fees be granted. No objections were filed.

## II. Standard of Review

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court must conduct a de novo review of any portion of the magistrate judge's recommendation to which objection is timely made. However, failure to file objections to the magistrate judge's proposed findings and recommendation permits the district court to review the recommendation under the standards that the district court believes are appropriate and, under these circumstances, the parties' right to de novo review is waived. See Webb v. Califano, 468 F. Supp. 825 (E.D. Cal. 1979). Because no objections were filed, this Court reviews the report and recommendation of the magistrate judge for clear error.

## III. Discussion

Based upon the parties' briefs, the magistrate judge determined that the plaintiff's motion for an award of attorney's fees was warranted. This Court concludes that the magistrate judge's determination is not clearly erroneous. Accordingly, this

Court finds that the plaintiff's motion for attorney's fees under the EAJA should be granted.

#### IV. Conclusion

For the reasons set forth above, this Court finds that the magistrate judge's recommendation is not clearly erroneous and hereby AFFIRMS and ADOPTS the report and recommendation of the magistrate judge in its entirety. Accordingly, the plaintiff's motion for an award of attorney's fees in the amount of \$2,719.89 is GRANTED. Further, it is ORDERED that the defendant pay the awarded fees directly to the plaintiff's attorney, Mr. Brock M. Malcolm, Esq., Bailey, Stultz, Oldaker & Greene, P.L.L.C., P.O. Box 1310, Weston, WV 26452.

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit a copy of this memorandum opinion and order to counsel of record herein.

DATED: January 22, 2008

/s/ Frederick P. Stamp, Jr.  
FREDERICK P. STAMP, JR.  
UNITED STATES DISTRICT JUDGE